

Functional Series 300  
Acquisition and Assistance

INTERIM UPDATE #1

SUBJECT: Contracting with a Foreign Governmental Organization

NEW MATERIAL: Interim guidance on contracting and subcontracting with a foreign governmental organization.

EFFECTIVE DATE: August 26, 1996

## POLICY

USAID/General Notice  
M/OP  
08/26/96

SUBJECT: Contracting with a Foreign Governmental Organization

This Notice establishes new policy on contracting and subcontracting with foreign governmental organizations. While contracting and subcontracting with a foreign governmental organization may be necessary under some circumstances, such contracts do merit special consideration.

From time to time USAID has entered into contracts with foreign governmental organizations, and recipients of USAID contracts and assistance instruments have entered into subcontracts with foreign ministries or other foreign governmental organizations.

We have become increasingly concerned about potential difficulties with such arrangements, so in order to assure appropriate accountability for funds, USAID has established new approval requirements for contracting and subcontracting with foreign governments. In addition to new approval requirements, this notice also provides some guidance for Contract and Agreement Officers when reviewing proposed subcontract awards to foreign governments.

This notice applies to contracts and subcontracts with organizations which function as governing bodies such as foreign ministries and local governments. It does not apply to contracts or subcontracts with foreign government-owned parastatal organizations which function more like private sector commercial or non-profit organizations. (Note that foreign government-owned parastatal organizations are covered by the nationality restrictions in ADS chapter 310.5.6d. The nationality rules do not apply to the types of governmental organizations covered in this policy.)

## Approvals

All contracts and subcontracts with foreign governmental organizations which exceed

\$500,000 shall be approved by the Procurement Executive. Those which are \$500,000 or less shall be approved by the Contract/Agreement Officers. This requirement includes contracts directly between USAID and the foreign governmental organization, subcontracts under contracts, and subcontracts under grants.

Prior to entering into a contract or approving a subcontract with a foreign governmental organization a written Justification and Approval is required to ensure that considerations have been thoroughly reviewed. The Contract/Agreement Officer must coordinate and obtain advice from GC/CCM or the RLA. The Justification and Approval for contracts and subcontracts exceeding \$500,000 must be then forwarded to the Procurement Executive for approval. Copies of the Justification and Approvals shall be filed in the contract or grant file.

The Justification and Approval shall clearly be identified as a justification for procurement from a foreign governmental organization and shall contain the following information:

1. A statement which concisely describes the specific need for a procurement from a foreign governmental organization.
2. An explanation of why the foreign organization is the most appropriate source of supply.
3. Discussion of specific issues that must be dealt with, e.g. deviations, waivers, etc.

#### Considerations

Contract/Agreement Officers should be aware of potential problems. Therefore, the following are some items which need to be considered before contracting or subcontracting with a foreign governmental organization:

1. Audit and accounting systems. Will the organization allow access to their books and records if an audit provision is required?
2. Reasonableness of cost/price. How can the Contracting Officer determine the price/cost reasonableness?
3. Taxes. How will taxes be handled if they are required? Under USAID contracts FAR clauses 52.229-7 and 52.229-9 apply to contracts with foreign governments.
4. Termination. Will the organization agree to contract termination provisions?
5. Host country contribution. Would it be appropriate for the foreign

governmental organization to provide some or all of the goods or services as part of its contribution under the Strategic Objective Agreement?

6. Host country salary supplementation. As a general rule USAID discourages salary supplements except in very special circumstances and only with the proper justification.
7. Clauses. Several mandatory clauses may not be applicable thus requiring a deviation authorized by the head of the contracting activity.

POINT OF CONTACT: For information on this notice, please contact Frances Maki, M/OP/P at (202)712-1467.

drcd8 (revised ads12)